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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,135	04/01/2004	Michael Hatzinikolas	11099-8	8104
1059	7590	09/29/2006	EXAMINER	
BERESKIN AND PARR 40 KING STREET WEST BOX 401 TORONTO, ON M5H 3Y2 CANADA			JUNKER, JONATHAN T	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/814,135	<b>Applicant(s)</b> HATZINIKOLAS, MICHAEL	
	<b>Examiner</b> Jonathan T. Junker	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/14/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Claims 1-10 are pending and are examined below. Claims 11 and 12 have been canceled.

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Koester, US Patent 6,880,775 B2.**

Regarding claim 1, Koester discloses a panel an elongated member (10 fig 1) having first and second wall component contacting faces (fig 2), wherein the second wall component contacting face is opposed to the first wall component contacting face, and wherein the member has a width across the first and second wall component contacting faces, wherein the first wall component interface side has a plurality of projections defined thereon (14 fig 1), wherein the projections are spaced vertically from each other.

Regarding claim 2, Koester discloses a panel of claim 1, wherein each projection (14 fig 1) is separated from any adjacent vertically spaced projections by a groove (16 fig 1), the groove has two ends and is open at both ends, the groove is configured to permit drainage of liquids collected therein, and wherein the moisture control strip has a plurality of apertures (18 fig 1) extending from the second wall component contacting face to the groove.

Regarding claim 3, Koester discloses a panel of claim 2, wherein each projection on the moisture control strip extends across the entire width of the elongate member (10 fig 1).

Regarding claim 6, Koester discloses a wall comprising an inner wall component (26 fig 4), an outer wall component (32 fig 4), and a plurality of moisture control strips disposed between (10 fig 4) the inner wall component and the outer wall component,

Art Unit: 3635

the moisture control strips each including an elongate member (10 fig 1) having a first wall component contacting face with a plurality of vertically spaced projections (14 fig 1) defined thereon and a second wall component contacting face and wherein the projections engage one of the inner wall component and the outer wall component (10 fig 4), and wherein the second wall component contacting face engages the other of the inner wall component and the outer wall component (10 fig 4), wherein the moisture control strips are horizontally spaced from each other within the wall (10 fig 4).

Regarding claim 7, Koester discloses the wall of claim 6, wherein each projection (14 fig 1) is separated from any adjacent spaced projections by a groove (16 fig 1), the groove has two ends and is open at both ends, the groove is configured to permit drainage of liquids collected therein, and wherein the moisture control strip has a plurality of apertures extending from the second wall component contacting face to the grooves (18 fig 1).

Regarding claim 8, Koester discloses the wall of claim 7, wherein each projection on the moisture control strip extends across the entire width of the elongate member (14 fig 1).

### ***Claim Objections***

Claims 4, 5, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3635

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan T. Junker whose telephone number is (571)272-4020. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



JTJ  
9/26/2006



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